

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1514-WQ-E TCEQ ID: RN105457766
RESPONDENT NAME: JASON RUSTMAN

Page 1 of 2

CASE NO.: 36560

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 3200 Wasson Road, Big Springs, Howard County

TYPE OF OPERATION: Construction site for horse arena and parking lot

SMALL BUSINESS: ☒ Yes ☐ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on June 1, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053

Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Pamela Campbell, Water Enforcement Section, MC 149, (512) 239-4493

TCEQ Regional Contact: Mr. Michael Edmiston, Midland Regional Office, MC R-7, (432) 570-1359

Respondent: Mr. Jason Rustman, 3200 Wasson Road, Big Spring, Texas 79720

Respondent's Attorney: Not represented by counsel on this enforcement matter.

RESPONDENT NAME: JASON RUSTMAN
DOCKET NO.: 2008-1514-WQ-E

Page 2 of 2

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p> <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review </p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: August 15, 2008</p> <p>Date of NOE Relating to this Case: October 7, 2008</p> <p>Background Facts: The EDPRP was filed on February 6, 2009 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received notice of the EDPRP. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference. </p> <p>Current Compliance Status: Not yet in compliance.</p> <p>WQ: Failed to obtain authorization to discharge storm water associated with construction activities under a Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS ("CFR") § 122.26(c)]. </p>	<p>Total Assessed: \$2,100</p> <p>Total Deferred: \$0</p> <p> <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset </p> <p>Total Due to General Revenue: \$2,100</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days, develop and implement a Storm Water Prevention Plan to and submit a Notice of Intent, including associated application fees, to comply with the General Construction Permit requirements. 2. Within 45 days, submit written notarized certification and detailed supporting documentation, including photographs, receipts, and other records to demonstrate compliance with Ordering Provision 1.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	25-Aug-2008	Screening	18-Sep-2008	EPA Due	
	PCW	16-Dec-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	Jason Rustman		
Reg. Ent. Ref. No.	RN105457766		
Facility/Site Region	7-Midland	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36560	No. of Violations	1
Docket No.	2008-1514-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Pamela Campbell
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$2,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5.0% Enhancement **Subtotals 2, 3, & 7** \$100

Notes

The penalty is enhanced due to one NOV with violations same or similar to those cited in this action.

Culpability No 0.0% Enhancement **Subtotal 4** \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** \$0

Economic Benefit 0.0% Enhancement* **Subtotal 6** \$0

Total EB Amounts \$180
Approx. Cost of Compliance \$2,225

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$2,100

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$2,100

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$2,100

DEFERRAL **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **\$2,100**

Screening Date 18-Sep-2008

Docket No. 2008-1514-WQ-E

PCW

Respondent Jason Rustman

Policy Revision 2 (September 2002)

Case ID No. 36560

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105457766

Media [Statute] Water Quality

Enf. Coordinator Pamela Campbell

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The penalty is enhanced due to one NOV with violations same or similar to those cited in this action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 18-Sep-2008 Respondent Jason Rustman Case ID No. 36560 Reg. Ent. Reference No. RN105457766 Media [Statute] Water Quality Enf. Coordinator Pamela Campbell Violation Number 1	Docket No. 2008-1514-WQ-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision June 12, 2008</i>												
Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)													
Violation Description Failed to obtain authorization to discharge storm water associated with construction activities under a Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit. Specifically, the Site was cleared and graded for construction of a horse arena and parking lot, but the Respondent had not applied for a permit or developed and implemented a Storm Water Pollution Prevention Plan (SWP3).													
Base Penalty \$10,000													
>> Environmental, Property and Human Health Matrix													
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Harm</td> <td></td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major Moderate Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td style="text-align: center;"><input type="text"/> <input type="text"/> <input type="text"/></td> <td></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td style="text-align: center;"><input type="text"/> <input type="text"/> <input type="text"/></td> <td></td> </tr> </table>		Harm		Release	Major Moderate Minor		Actual	<input type="text"/> <input type="text"/> <input type="text"/>		Potential	<input type="text"/> <input type="text"/> <input type="text"/>	
	Harm												
Release	Major Moderate Minor												
Actual	<input type="text"/> <input type="text"/> <input type="text"/>												
Potential	<input type="text"/> <input type="text"/> <input type="text"/>												
Percent 0%													
>> Programmatic Matrix													
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Falsification</td> <td style="text-align: center;">Major Moderate Minor</td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input checked="" type="text"/> <input type="text"/> <input type="text"/></td> </tr> </table>		Falsification	Major Moderate Minor		<input type="text"/>	<input checked="" type="text"/> <input type="text"/> <input type="text"/>						
	Falsification	Major Moderate Minor											
	<input type="text"/>	<input checked="" type="text"/> <input type="text"/> <input type="text"/>											
Percent 10%													
Matrix Notes	100% of the rule requirement was not met.												
Adjustment \$9,000													
\$1,000													
Violation Events													
Number of Violation Events <input type="text" value="2"/> <input type="text" value="34"/> Number of violation days													
mark only one with an x	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">daily</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">monthly</td> <td style="text-align: center;"><input checked="" type="text"/></td> </tr> <tr> <td style="text-align: center;">quarterly</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">semiannual</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">annual</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">single event</td> <td style="text-align: center;"><input type="text"/></td> </tr> </table>	daily	<input type="text"/>	monthly	<input checked="" type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>
daily	<input type="text"/>												
monthly	<input checked="" type="text"/>												
quarterly	<input type="text"/>												
semiannual	<input type="text"/>												
annual	<input type="text"/>												
single event	<input type="text"/>												
Violation Base Penalty \$2,000													
Two monthly events are recommended from the investigation date (August 15, 2008) to the screening date (September 18, 2008).													
Good Faith Efforts to Comply													
0.0% Reduction													
Before NOV NOV to EDPRP/Settlement Offer													
Extraordinary Ordinary N/A	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;"><input checked="" type="text"/></td> <td style="text-align: center;">(mark with x)</td> </tr> </table>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input checked="" type="text"/>	(mark with x)						
<input type="text"/>	<input type="text"/>												
<input type="text"/>	<input type="text"/>												
<input checked="" type="text"/>	(mark with x)												
Notes	The Respondent does not meet the good faith criteria for this violation.												
Violation Subtotal \$2,000													
Economic Benefit (EB) for this violation													
Statutory Limit Test													
Estimated EB Amount	\$180												
Violation Final Penalty Total \$2,100													
This violation Final Assessed Penalty (adjusted for limits) \$2,100													

Economic Benefit Worksheet

Respondent Jason Rustman

Case ID No. 36560

Reg. Ent. Reference No. RN105457766

Media Water Quality

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$2,000	21-Feb-2008	30-Apr-2009	1.19	\$8	\$159	\$186
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$225	21-Feb-2008	30-Apr-2009	1.19	\$13	n/a	\$13
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement a SWP3, and to file the notice of intent (NOI). Date required is the date the violation was first documented. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,225

TOTAL

\$180

Compliance History

Customer/Respondent/Owner-Operator: CN603321514 RUSTMAN, JASON Classification: AVERAGE Rating: 2.00
Regulated Entity: RN105457766 JASON RUSTMAN Classification: AVERAGE Site Rating: 2.00
ID Number(s):
Location: 3200 WASSON RD, BIG SPRING, HOWARD CO, TX Rating Date: 9/1/2008 Repeat Violator: NO
TCEQ Region: REGION 07 - MIDLAND
Date Compliance History Prepared: September 17, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 17, 2003 to September 17, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Mark Oliver Phone: 512-239-3308

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
8/18/2008
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date 02/22/2008 (636369)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Description: Failure to obtain a storm water permit prior to commencing construction.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Description: Failure to post the NOI.
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JASON RUSTMAN,
RN105457766**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-1514-WQ-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, the rules of the TCEQ, and 40 CODE OF FEDERAL REGULATIONS ("CFR") pt. 122, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Jason Rustman ("Mr. Rustman").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Rustman owns and operates a construction site for a horse arena and parking lot located at 3200 Wasson Road, in Big Spring, Howard County, Texas (the "Site").
2. The Site has discharged waste into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
3. During an inspection on August 15, 2008, a TCEQ Midland Regional Office investigator documented that Mr. Rustman failed to obtain authorization to discharge storm water associated with construction activities under a Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit. Specifically, the Site was cleared and graded for construction of a horse arena and parking lot prior to obtaining a permit or developing a Storm Water Pollution Prevention Plan.
4. Mr. Rustman received notice of the violation on or about October 12, 2008.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jason Rustman" (the "EDPRP") in the TCEQ Chief Clerk's office on February 6, 2009.
6. By letter dated February 6, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Rustman with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Mr. Rustman received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Rustman received notice of the EDPRP, provided by the Executive Director. Mr. Rustman failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Rustman is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, the rules of the TCEQ, and 40 CODE OF FEDERAL REGULATIONS ("CFR") pt. 122, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Rustman failed to obtain authorization to discharge storm water associated with construction activities under a Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS ("CFR") § 122.26(c).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Rustman with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Rustman failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Rustman and assess the penalty recommended by the Executive Director.
5. An administrative penalty in the amount of two thousand one hundred dollars (\$2,100.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

6. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Rustman is assessed an administrative penalty in the amount of two thousand one hundred dollars (\$2,100.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Rustman's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Jason Rustman; Docket No. 2008-1514-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Within 30 days after the effective date of this Order, Mr. Rustman shall develop and implement a Storm Water Prevention Plan and submit a Notice of Intent, including associated application fees, to comply with the General Construction Permit requirements, in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS ("CFR") pt. 122.26(c) to:

Wastewater Permitting Section
Water Quality Division, MC 148
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. Within 45 days after the effective date of this Order, Mr. Rustman shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Mr. Rustman shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2 and 3 to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Michael Edminston, Water Section Manager
Texas Commission on Environmental Quality
Midland Regional Office
3300 North A Street
Midland, Texas 78711-3087

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Mr. Rustman. Mr. Rustman is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
6. If Mr. Rustman fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Rustman's failure to comply is not a violation of this Order. Mr.

Rustman shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Rustman shall notify the Executive Director within seven days after Mr. Rustman becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Rustman shall be made in writing to the Executive Director. Extensions are not effective until Mr. Rustman receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Rustman if the Executive Director determines that Mr. Rustman has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Jason Rustman
Docket No. 2008-1514-WQ-E
Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JAMES W. SALLANS

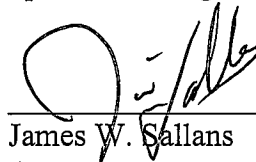
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is James W. Sallans I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jason Rustman (the "EDPRP") was filed with the Office of the Chief Clerk on February 6, 2009.

I sent the EDPRP to Mr. Rustman at its his last known address on February 6, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Mr. Rustman received notice of the EDPRP. Mr. Rustman failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference".



James W. Sallans
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared James W. Sallans, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 14th day of November, 2009.

Notary Stamp

